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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,560	03/15/2004	William H. Brine III	SHI 64963	9795
7590	10/31/2005		EXAMINER	
Lara A. Northrop Pietragallo, Bosick & Gordon One Oxford Centre, 38th Floor 301 Grant Street Pittsburgh, PA 15219			CHAMBERS, MICHAEL S	
			ART UNIT	PAPER NUMBER
			3711	
			DATE MAILED: 10/31/2005	

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/800,560	BRINE ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Mike Chambers	3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 19 September 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-3,5-20 and 24-29 is/are pending in the application.
- 4a) Of the above claim(s) 4,21-23 and 30-37 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-3,5-20 and 24-29 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____ .  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____ .                                  |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election without traverse of claims 1-3,5-20, and 24-29 is acknowledged. Claims 4, 21-23, and 30-37 are withdrawn from further consideration, as directed to claims non-elected without traverse, 37CFR1.142.

### ***Claim Objections***

Claim 13 is objected to because of the following informalities:

In line 2: "exist" should be --exit--.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 16 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "the extended portion comprises projections" is vague and indefinite. One of ordinary skill in the art would not be able to determine the metes and bounds of the invention. It is unclear from the structure of the claim, what is being claimed.

Claim 24 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "radially-expandable system comprising a plurality of offset wedges and a fastener" is vague and indefinite. One of ordinary skill in the art

would not be able to determine the metes and bounds of the invention. It is unclear from the structure of the claim, what is being claimed.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 6-12, 14-15, 18,19, and 26-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Doyle (6189222). Doyle discloses

a handle; and an articulated head connected to the handle (fig 2). In as much structure set forth by the applicant in the claims, the device is capable of use in the intended manner if so desired (See MPEP 2112).

As to claim 2 : Doyle discloses a articulated head is connected to the handle by an articulation mechanism (fig 2).

As to claim 3 : Doyle discloses an articulation mechanism that is located between an end of the handle and a base of the head (fig 2).

As to claim 6 : Doyle discloses a moveable head (fig 1,5).

As to claims 7 and 8 : Doyle discloses a displacement angle from 2 degree to 5 degrees (fig 1,5).

As to claim 9 : Doyle discloses a moveable head (fig 2).

As to claim 10 : Doyle discloses a first and second displacement angles (fig 2).

As to claim 11 : Doyle discloses a first and second displacement angles that are the same (fig 2).

As to claim 12 : Doyle discloses a first and second displacement angles that are different (fig 2).

As to claim 14 : Doyle discloses a first and second elements (fig 5).

As to claim 15 : Doyle discloses a first and second element that can pivot (fig 5).

As to claim 18 : Doyle discloses a metal (fig 2). All materials have some flexibility.

As to claim 19 : Doyle discloses a first and second element and move bar (fig 2).

As to claim 25: Doyle discloses a locking mechanism (fig 5).

As to claim 26 : See claim 1 rejection.

As to claim 27 : Doyle discloses an articulation mechanism (fig 2).

As to claims 28 and 29 : Doyle discloses a displacement angle from 2 degree to 5 degrees (fig 1,5).

Also,

Claims 1-3, 5-15, 17-19, and 25-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Schiefer (4367871). Schiefer discloses

a handle; and an articulated head connected to the handle (fig 1,4). In as much structure set forth by the applicant in the claims, the device is capable of use in the intended manner if so desired (See MPEP 2112).

As to claim 2 : Schiefer discloses a articulated head is connected to the handle by an articulation mechanism (fig 4).

As to claim 3 : Schiefer discloses an articulation mechanism that is located between an end of the handle and a base of the head (fig 4).

As to claim 5 : Schiefer discloses an articulation means contained within the head and handle (fig 4).

As to claim 6 : Schiefer discloses a moveable head (fig 1,4).

As to claims 7 and 8 : Schiefer discloses a displacement angle from 2 degree to 5 degrees (fig 1,4).

As to claim 9 : Schiefer discloses a moveable head (fig 1,4,4:16-20).

As to claim 10 : Schiefer discloses a first and second displacement angles (fig 1,6,4:16-20).

As to claim 11 : Schiefer discloses a first and second displacement angles that are the same (fig 1,4,4:16-20).

As to claim 12 : Schiefer discloses a first and second displacement angles that are different (fig 1,4,4:16-20).

As to claim 13 : Schiefer discloses a moveable head (fig 1,4).

As to claim 14 : Schiefer discloses a first and second element (fig 4).

As to claim 15 : Schiefer discloses a fastener (fig 4, item 134).

As to claim 17 : Schiefer discloses a resistive material (fig 4a).

As to claim 18 : Schiefer discloses a flexible member (fig 4, 4:56-57).

As to claim 19 : Schiefer discloses a first and second element and move bar (fig 4).

As to claim 25: Schiefer discloses a locking mechanism (fig 1).

As to claim 26 : See claim 1 rejection.

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As to claims 27-29 : Schiefer discloses an articulation mechanism (fig 1). The angles claimed would fall within the range of movement of the device.

Also,

Claims 1-3, 19-20 and 26-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Hubbard (303517). Hubbard discloses

a handle; and an articulated head connected to the handle (fig 1). In as much structure set forth by the applicant in the claims, the device is capable of use in the intended manner if so desired (See MPEP 2112).

As to claim 2 : Hubbard discloses a articulated head is connected to the handle by an articulation mechanism (fig 1).

As to claim 3 : Hubbard discloses an articulation mechanism that is located between an end of the handle and a base of the head (fig 1).

As to claim 19 : Hubbard discloses a first and second element and move bar (fig 1).

As to claim 20 : Hubbard discloses a ball and socket assembly (fig 1).

As to claim 26 : See claim 1 rejection.

As to claims 27-29 : Hubbard discloses an articulation mechanism (fig 1). The angles claimed would fall within the range of movement of the device.

Also,

Claims 1-3, 5, 13, 19, and 25-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Ficke (3357035). Ficke discloses

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a handle; and an articulated head connected to the handle (fig 1). In as much structure set forth by the applicant in the claims, the device is capable of use in the intended manner if so desired (See MPEP 2112).

As to claim 2 : Ficke discloses a articulated head is connected to the handle by an articulation mechanism (fig 1).

As to claim 3 : Ficke discloses an articulation mechanism that is located between an end of the handle and a base of the head (fig 1).

As to claim 5 : Ficke discloses an articulation means contained within the head and handle (fig 1).

As to claim 13 : Ficke discloses a moveable head (fig 1).

As to claim 19 : Ficke discloses a first and second element and move bar (fig 1).

As to claim 25: Ficke discloses a locking mechanism (fig 1).

As to claim 26 : See claim 1 rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mike Chambers whose telephone number is 571-272-4407. The examiner can normally be reached on Mon-Fri 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Kim can be reached on 571-272- 4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

4367871\*6189222\*303517\*3357035

Michael Chambers  
Examiner  
Art Unit 3711

October 18, 2005

  
EUGENE KIM  
PRIMARY EXAMINER